

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF THURSTON
3

4 CITY OF SNOQUALMIE, a municipal
5 corporation,

6 Petitioner,

7
8 v.

9 CENTRAL PUGET SOUND GROWTH
10 MANAGEMENT HEARINGS BOARD, an
11 environmental board,

12 Respondent.
13
14

**Thurston County Superior Court
No. 13-2-01841-9**

(GMHB Case No. 13-3-0002)

**ORDER DENYING CERTIFICATE OF
APPEALABILITY**

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16 **I. REQUEST FOR CERTIFICATE OF APPEALABILITY**

17 This matter is before the Board on the City of Snoqualmie's application for a
18 Certificate of Appealability for direct review by the Washington State Court of Appeals in
19 *City of Snoqualmie v. Central Puget Sound Growth Management Hearings Board*,¹ Thurston
20 County Superior Court Cause No. 13-2-01841-9.
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23 **II. PROCEDURAL BACKGROUND**

24 On December 3, 2012, King County adopted Ordinance No.17485 updating its
25 Comprehensive Plan (CP) and development regulations (DRs) and Ordinance Nos.17486
26 and 17487 revising its Countywide Planning Policies (CPPs). Ordinance Nos. 17485 and
27 17487 also approved amendments to the Urban Growth Area (UGA). The County's action
28 was challenged by the City of Snoqualmie, whose requested UGA expansion was not
29 approved by the County. Before the Growth Management Hearings Board, Snoqualmie
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32 ¹ Effective July 1, 2010, the legislature amended Chapter 36.70A RCW to restructure the three former Growth Management Hearings Boards into a single statewide Growth Management Hearings Board. Laws of 2010, ch. 211. RCW 36.70A.250.

1 asserted the County failed to incorporate and apply 2009 legislative amendments to RCW
2 36.70A.110(2) when it updated its CPPs, CP and DRs and when it denied Snoqualmie's
3 UGA expansion request. Snoqualmie also asserted the County unlawfully delegated its
4 planning authority to the Growth Management Planning Council in violation of RCW
5 36.70A.040(3) and .210(1) and (2).

6
7 On August 12, 2013, the Board issued its Final Decision and Order (FDO) largely
8 upholding the County's action. However, the Board remanded key portions of the updated
9 Comprehensive Plan to King County to take action in consideration of the 2009 legislative
10 amendments. The City of Snoqualmie appealed the Board's decision to Thurston County
11 Superior Court with seven assignments of error.

12 On September 10, 2013, the City of Snoqualmie filed an Application for Direct
13 Review and Request for Certificate of Appealability (City's Application). On September 18,
14 2013, King County filed King County's Response to the City of Snoqualmie's Application for
15 Direct Review and Request for Certification of Appealability (County's Response).
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17 18 III. AUTHORITY AND ANALYSIS

19 The Administrative Procedure Act, RCW 34.05.518, sets forth the criteria and
20 procedures for Certificates of Appealability. RCW 34.05.518(3) identifies the Growth
21 Management Hearings Board as an "environmental board," and establishes the following
22 criteria under which a certificate of appealability may be issued: (Emphasis added)

23 (b) An environmental board may issue a certificate of appealability if it finds
24 that **delay in obtaining a final and prompt determination of the issues**
25 **would be detrimental to any party or the public interest** and **either**:

26 (i) Fundamental and urgent statewide or regional issues are raised; **or**

27 (ii) The proceeding is likely to have significant precedential value.
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30 A board's issuance of a certificate is discretionary: a board "may" issue a certificate. RCW
31 34.05.518(4) requires a board to state in its certificate of appealability "which criteria it
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1 applied [and] explain how that criteria was met.” This Board reviews the request for
2 certification in light of each of these criteria.

3
4 **A. Detrimental Delay**

5 This is a threshold question as the Board may not issue a Certificate of Appealability
6 unless “delay in obtaining a final and prompt determination of the issues would be
7 detrimental to any party or the public interest.” Snoqualmie asserts delay will be detrimental
8 to its own interest and to the public interest. The Board is not persuaded. No compelling
9 interest requires expedited appellate court resolution of the City’s issues.

10
11 Role of the GMPC. Pursuant to interlocal agreements, the city-county process for
12 Countywide Planning Policy amendments and UGA revisions in King County involves the
13 Growth Management Planning Council. The King County process for “major” comprehensive
14 plan and UGA revisions is on a four-year cycle, with the next update in 2016.² Thus there is
15 no pressing need for early appellate review of the role of the Growth Management Planning
16 Council in the King County planning process.

17
18 2009 Legislative Amendments. The Board recognizes that the Petitioner finds
19 urgency in the question of whether the County is required to expand its UGA on the basis of
20 the City’s analysis of its non-residential land capacity. The Board notes, however, that the
21 FDO remanded key sections of the Comprehensive Plan to King County for review in light of
22 the 2009 legislative amendments at issue here.³ The County’s review and response is
23 expected to be completed in a matter of months. Incorporation of changes to comprehensive
24 plan policies or revisions to plan text, if adopted, may well moot some or all of Petitioner’s
25 issues.⁴ Thus delay is as likely to be beneficial to Petitioner as detrimental.

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27 UGA Expansion. Snoqualmie asserts it has an interest in annexing additional areas
28 for commercial development to satisfy its residents’ needs for local shopping opportunities.
29 However, the County’s area zoning study found no major retailers had yet taken advantage
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32 ² FDO, p. 14.

³ FDO, p. 43, pp. 57-58.

⁴ See, e.g., FDO, p. 43, fn. 145.

1 of land that is currently available within Snoqualmie's present city limits for shopping center
2 development.⁵ Thus there is no immediate need for the City's requested expansion.

3 Judicial Economy. King County states it has an interest in judicial economy. Because
4 the City of Snoqualmie has said it intends to pursue this matter until it obtains an appellate
5 court decision, therefore in the interest of judicial economy, King County "does not have a
6 particular objection" to direct review.⁶ The Board shares the County's interest in judicial
7 economy, but notes the County's argument would support direct review in any instance
8 where a party threatened not to be satisfied with Superior Court outcomes. In this case, the
9 Board has remanded key portions of the Comprehensive Plan to the County to review and
10 revise in light of the 2009 legislative amendments on which Snoqualmie relies. It would be
11 premature for the Board to assume this case will ultimately require appellate review.
12

13 As to the public interest in certainty, the Board does not find this case poses a
14 particular need for expedited consideration. There is no need to bypass Superior Court
15 review.
16

17 **Conclusion:** For the reasons stated above, the Board finds review by the Superior
18 Court will not impose delay detrimental to the interests of the parties or the general public.
19

20 **B. Fundamental and Urgent Statewide or Regional Issues Raised**

21 To issue a certificate of appealability, RCW 34.05.518 (3) requires the Board to find
22 **both** detrimental delay and **either** fundamental and urgent statewide or regional issues **or**
23 likelihood of significant precedential value. Having determined the threshold criterion of
24 detrimental delay is not met, the Board comments only briefly on application of the other
25 criteria for issuance of a certificate of appealability.
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27 Role of GMPC. King County's Countywide Planning Policies provide that CCP
28 amendments will be initiated and screened by the Growth Management Planning Council,
29 then adopted, revised, or rejected by the King County Council. The Board determined this
30 process does not violate Growth Management Act provisions which require that countywide
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⁵ FDO, p. 53.

⁶ County Response, p. 1.

1 planning policies be adopted by the county legislative body. RCW 36.70A.040(3); RCW
2 36.70A.210(1) and (2). The FDO points out the King County CPP process is unique to King
3 County, each county in the central Puget Sound region having developed its own city-
4 county collaborative planning process.⁷ Snoqualmie's unlawful delegation assertion
5 therefore presents no regional or statewide issue.

6 2009 Legislative Amendments. Incorporation of the 2009 legislative amendments into
7 CPPs and comprehensive plans is, indeed, a statewide matter and has been previously
8 addressed in Growth Board rulings. Here, King County considered and applied the 2009
9 legislative amendments (referred to in the FDO as "SHB 1825") in amending its Countywide
10 Planning Policies but not its Comprehensive Plan. There is no urgency for appellate review
11 of King County's CPP amendments.⁸

12
13 The Board remanded the Comprehensive Plan to the County to review in light of the
14 legislative amendments and to either revise or explain why no revision is necessary. The
15 FDO set a four-month compliance deadline. Snoqualmie asserts accelerated appellate
16 review is necessary so that cities in King County and elsewhere can timely update their
17 comprehensive plans. However, until King County takes action in response to the remand
18 from the Board, Snoqualmie's contention that the 2009 legislative amendments have not
19 been properly applied is not ripe.

20
21 Denial of UGA Expansion. King County's 2012 UGA amendments did not include
22 Snoqualmie's requested UGA extension at a freeway interchange for commercial
23 development.⁹ Snoqualmie primarily asserts a factual analysis which is specific to this case.
24 To the extent Snoqualmie contends statewide issues are raised and the urban growth goal
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27 ⁷ FDO, p. 17.

28 ⁸ For example, King County's Four-to-One program, allowing UGA expansion conditioned on voluntary open
29 space dedication, was amended in the CPP Ordinance from a requirement to an alternative basis for UGA
30 expansion. Snoqualmie continues to object that Four-to-One is a mandatory exaction that violates the 2009
31 legislative amendments. Petition for Review, 7.e and 8.d. However, the plain language of the amended
32 Countywide Planning Policies now makes the program a voluntary alternative. Further, the Four-to-One
program is unique to King County and not a "statewide or regional" matter.

⁹ Snoqualmie characterizes the County's action as "approving UGA sizing based solely on a countywide
analysis rather than evaluating the sufficiency of the area for each city." City's Application, at 6. Snoqualmie
misstates the County's action. In fact, as the FDO found, the County reviewed the City's analysis and
concluded the City already has sufficient urban land for appropriate uses. FDO, pp. 52-54.

1 is violated, the Board notes the appellate courts have already provided guidance on
2 urbanization at freeway interchanges for commercial development.¹⁰

3 **Conclusion:** The Board finds this matter in its present posture does not present
4 fundamental or urgent issues of statewide or regional importance.
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6 **C. Significant Precedential Value**

7 Snoqualmie states this matter presents “an issue of first impression which will have
8 significant precedential value.”¹¹ The Board acknowledges that appellate rulings on GMA
9 questions provide precedential guidance not only to the parties but to other local
10 governments and to the Board.¹² In the present matter, local and county-specific facts will
11 be determinative of most of the seven assignments of error. It would be premature to
12 propose accelerated appellate review.
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14 **IV. ORDER**

15 Having reviewed the application for Certificate of Appealability, the relevant
16 provisions of the Administrative Procedure Act, in particular RCW 34.05.518(3), and the
17 facts and record of this matter, the Board finds that neither the parties’ nor the public interest
18 requires this matter to be determined on an expedited basis.
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20 Having found the criteria of RCW 34.05.518(3) are not satisfied, the Board **denies**
21 Petitioner’s application for a Certificate of Appealability in Thurston County Superior Court
22 Case No.13-2-01841-9.
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28 ¹⁰ See e.g., *Clark County v. W. Washington Growth Management Hearings Board*, 161 Wn. App. 204, 244-45,
29 254 P.3d 862 (2011), vacated in part, 177 Wn.2d 136, 298 P.3d 704 (2013): “Moreover, to the extent that the
30 county believes that the “only logical place” for economic growth of the city is an expansion of the UGA to the
31 I-5 corridor, their belief lacks support in the law. Under the GMA, the “logical place” for expansion and growth
is to build higher within the UGA, not to expand it. See RCW 36.70A.020(2) (stating that a goal of the GMA is
to “[r]educe the inappropriate conversion of undeveloped land into sprawling, low-density development”).”

32 ¹¹ City’s Application at 1.

¹² Certainly the outcome sought by Snoqualmie – an appellate ruling that the 2009 legislative amendments
allow individual city expansion plans to trump coordinated regional growth management – would have
significant precedential effect, essentially gutting the GMA.

1 Entered this 27th day of September, 2013.

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4 Margaret Pageler, Board Member

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7 Cheryl Pflug, Board Member

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9 _____
10 Charles Mosher, Board Member